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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1379 OF 2007
IN
WRIT PETITION NO. 5605 OF 2004

Shri G.B. Khetade ... Applicant

V/s

The Principal General Manager,
B.S.N.L. Kalyan Telecom, Kalyan. ... Respondent

Mr. S.S.Karkera for the applicant.

Mr. V.S.Masurkar for the respondent.

CORAM: SMT. NISHITA MHATRE, J.

DATED: 31ST AUGUST, 2007.

P.C.:

1. This civil application has been filed to claim wages payable under Section 17B of the Industrial Disputes Act. The applicant has stated in the civil application that he is unemployed and his efforts to secure employment after he was terminated from service on 6th December, 1992 have been unsuccessful. He has also stated that he sustained himself on the earnings of his wife who was earning as a maidservant.

2. In its reply, the original petitioner has stated

that the applicant has agricultural income and, therefore, wages under Section 17B should not be paid. It is also contended that back wages have been deposited pursuant to the orders of this Court. Besides this, it is pleaded that, it is impossible for the applicant workman to sustain himself without a job from the year 1992 when his services were terminated. It is also contended that in any event the applicant has approached this Court after an inordinate delay. A rejoinder has been filed by the applicant wherein he has stated that he has no agricultural income and, therefore, the application under Section 17B be granted.

3. In my view, the submissions made on behalf of the original petitioner are without merit. The petition was dismissed for default and later restored. The petition was admitted on 29.9.2005. Thereafter, the matter came up for hearing on interim relief on 12.12.2005. The petitioner was directed to disclose the last drawn wages of the the applicant workman. Thus, the Court considered the fact that no application for granting wages under Section 17B has been filed by the applicant workman and therefore no order for payment of wages was passed. However, the petitioners were directed to deposit back wages in this Court.

4. In my view, there is no delay in filing the application under Section 17B. Apart from this, the question of delay does not arise when an application under Section 17B is filed. The applicant has to plead that he is not gainfully employed and, therefore, such an application could have been made only when it was found that there is no work available for the applicant.

5. Apart from this, the payment of wages under Section 17B is statutory benefit given to a workman against whom a writ petition is filed challenging an award which has granted the workman reinstatement with continuity of service and back wages. In my view, therefore, the submissions of the advocate for the original petitioner i.e. the respondent herein, cannot be accepted.

6. The civil application is granted. The respondent herein, shall pay to the applicant workman wages as payable under Section 17B from the date when the award was stayed i.e. from 29.9.2005.

7. Civil application disposed of accordingly.

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